

COMMONWEALTH OF KENTUCKY

DEPARTMENT OF PUBLIC ADVOCACY

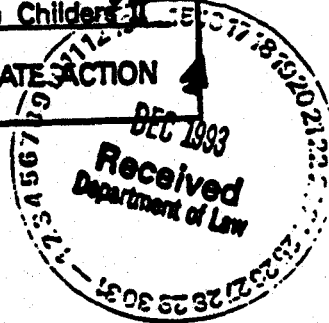
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DATE: 12/15/93
TO: Mr. Childers
FROM: Masten Childers II
FOR APPROPRIATE ACTION

December 15, 1993

Hon. Masten Childers II
General Counsel
Cabinet for Human Resources
275 East Main Street
Frankfort, KY 40621



RE: Expert Assistance in Death Penalty Case

Dear Mr. Childers:

Unfortunately I have to bother you again with this type of matter. I hope you understand that until the law is clarified enough that prosecutors and judges understand it sufficiently, I will be compelled to notify you whenever I anticipate seeking expert assistance on behalf of my death penalty defendants.

I am currently in the pretrial stages of two capital cases. One is in Harlan County; the other is in Knott County. Both of these cases present significant mental health issues, both for a possible absolute defense of insanity or diminished capacity, and for guilt phase and penalty phases. I will need assistance that will involve the following:

1. Evaluation of all records, statements of witnesses, and the like obtained through counsel's efforts from individuals, hospitals, doctors, mental health clinics, etc.;

2. Availability to regularly consult with counsel to assist him in evaluation of the material to determine whether an affirmative defense exists, guidance in the investigation and the seeking of additional information of a mental health nature, including assisting

counsel in formulating areas of inquiry of various witnesses and/or other experts from the defendant's past during the investigation stages;

3. Evaluation of the defendant, and said evaluation to be kept strictly confidential and unavailable to prosecutor and/or judges unless or until defense counsel should initiate actions which compel disclosure under reciprocal discovery rules or rules of evidence;

4. Consultation with witnesses deemed important by said expert or counsel;

5. Assessment of all the above to determine whether an affirmative defense exists, and/or whether there is sufficient evidence of a statutory or non-statutory mitigating nature for presentation of a penalty phase;

6. Assistance in the preparation and presentation of direct testimony of experts and/or non-expert witnesses in order to lay sufficient foundation for expert opinions;

7. Assistance in the planning and preparation of cross-examination of expert and non-expert witnesses on behalf of the Commonwealth on mental health matters;

8. Testimony on defendant's behalf with preparation for redirect and cross-examination for the same.

I fully understand the Cabinet is unable to act in the above capacity. I recognize that the funding crisis has impacted

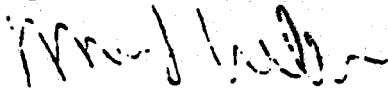
upon CHR as hard or worse than it has impacted upon my department; however, prosecutors (and sometimes judges) continue to insist that "KCPC can do it," and I must have some position statement by your office that they cannot and will not.

Recently, I encountered a situation in which the prosecutor suggested that even though CHR may take the position that it cannot assume the role described above, that if they are "ordered to do it," then it will be done. I recall that in still another case an attorney for the state police and CHR appeared at one of my hearings and made it known to the trial court that if such an order was issued, then there would be a likelihood, if not probability, that a writ would be sought. I agreed in open court that such a writ would probably be successful. If that is still the position by CHR, that would need to be reflected in any response.

Finally, in the case of Commonwealth v. Alfred Thomas (Knott County) Dr. Candace Walker was assigned the duty of being the "defense expert" back in 1988. Of course, in 1988 the funding situation was much different, and there were fewer demands being made of this nature. I will be handling the Thomas case. I must know whether or not Dr. Walker will be able to, again, assume the role set out above. I must confess that my use of her time will be different, considerably so, than the previous attorney who had no death penalty experience. I feel certain she will be called upon to testify in any event, but I need to know whether she can assist me in the ways I mentioned above.

Thank you for your time and consideration of this matter. I will be looking forward to a response. Bear in mind that any response I receive will be copied to the trial court. If you have any questions, please don't hesitate to contact me.

Very truly yours,



Michael L. Williams
Assistant Public Advocate
Capital Trial Unit

MLW:ps